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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. VAHAN JALADIAN, Defendant and Appellant.	C043218 (Super. Ct. No. 00F08341)

Defendant Vahan Jaladian was convicted after a jury trial of felony assault (Pen. Code, § 245, subd. (a)(1)--count one),[1] forcible rape (§ 261, subd. (a)(2)--count two), threatening a witness (§ 136.1, subd. (c)(1)--count three), felony battery (§ 243, subd. (d)--count four), and making criminal threats (§ 422--count five). The jury also found defendant had inflicted great bodily injury in the commission of the assault

[1] Undesignated statutory references are to the Penal Code.

(§ 12022.7, subd. (e)). Sentenced to an aggregate term of 10 years eight months in state prison, defendant appeals.

On appeal, defendant contends that the trial court erred in admitting certain testimony from an expert on battered women's syndrome (BWS). Defendant also contends there was insufficient evidence to support his conviction for rape, because the evidence consisted of hearsay evidence that defendant believes was unreliable. In supplemental briefing, defendant contends the trial court violated *Blakely v. Washington* (2004) 542 U.S. ___ [159 L.Ed.2d 403] (*Blakely*) by imposing consecutive sentences. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2000, Deputy Matthew Petersen of the Sacramento County Sheriff's Department went to the home of I.B., the victim's sister (the sister), in response to a report of an assault and rape that had occurred two nights earlier. The sister, who had lived in the United States for approximately 11 years and appeared fluent in English, translated for the victim, who did not speak English well. Deputy Petersen summarized the victim's statement. Through the sister, the victim told the officer that her boyfriend told her to come to his house on June 9 because he was upset with her. Her boyfriend had loaned her some money, which she had not completely repaid. She had changed her telephone number and was trying to break off the relationship. He told her she had to come to his house or he would go to her house and hurt her. The victim would not give

Deputy Petersen her boyfriend's name during this interview because she was afraid her boyfriend would kill her.

The victim went to her boyfriend's house and, after several of his friends left, he became upset with her. He grabbed her head by the hair with both hands and head-butted her three times in the nose and forehead, causing her nose to bleed. He then struck her in the chest with closed fists and repeatedly kicked at her legs. The victim used body language demonstrating the head-butting and blow to her chest. Her boyfriend then told her to clean herself up because he wanted to have sex. She did as she was told and "let" him have sex with her because she was afraid he would hurt her if she did not comply. Thereafter, he attempted to have sex with her again but she was crying and told him "no." Deputy Petersen did not record what was said "word for word" but he wrote down that, after she said "no," "he did not force [her] to do it again." The victim left her boyfriend's house at 4:00 a.m. and returned home.

The next day, the victim was in a lot of pain. She called her boyfriend and had him take her to the hospital. The doctor said her nose was fractured and to let it heal. She told the doctor she had received her injuries from a fall. Her boyfriend told her if she told the police what he had done or he got arrested, he would kill her or have somebody kill her.

The victim told Deputy Petersen her boyfriend had beat her approximately five times before but she had never made a police report. She did not want her boyfriend arrested because she was

afraid he would hurt or kill her, but she wanted a police report so she could get a restraining order to keep him away. A female officer who was also present at the interview took photographs of the victim's body, depicting trauma to her face, and multiple bruises on her chest, arms and legs.

The parties stipulated the victim had seen doctors Robert Hayes, M.D., and Thomas Maclennan, M.D., at the Med-7 Urgent Care Center on June 10, 2000. She said she had walked into a truck and struck her nose. She denied having been punched with a fist. X-rays revealed she suffered a nasal bone fracture without major displacement.

On July 19, 2000, the victim called 911 to report that defendant had been threatening her. She told the dispatcher through a Russian translator that defendant was going to kill her. She said defendant had repeatedly threatened her, threatened to kill her and told her she would not be alive in the morning. She was afraid to leave her house and her child.

Sacramento City Police Officer Michael Avila responded to the victim's 911 call. One of the victim's several daughters (the older daughter), who was fluent in English, translated the interview for her mother. Through the older daughter, who was 16 years old at the time, the victim told the officer that defendant had loaned her money and physically "beat" and "raped" her on June 11 because she was unable to pay him back. "Beat" and "raped" were the exact words the older daughter used. The victim said she had reported the assault before but did not

provide defendant's name at that time because she felt sorry for him, did not want to see him go to jail, and defendant told her he would forget about the $3,000 he loaned her if she did not report it to the police.

The victim told Officer Avila that defendant had called her earlier that day, demanded she pay him the $3,000, and threatened that no one would be able to help her and she would be dead by morning. She was afraid of defendant because of what he had done to her in the past. She said she did not want defendant arrested but wanted the officer to document the threatening call in case something happened to her. She cried during part of the interview.

On August 2, 2000, Detective Slabaugh conducted a 90-minute taped interview with the victim, which was later translated by a court-registered interpreter. During the interview, the victim said defendant beat her but that she had hesitated to report it because she felt pity for him and he had helped her a lot in the past. Defendant was pressuring her for the $3,000 she owed him and had threatened her life and the lives of her children if she did not pay. The victim told the detective that if defendant were arrested, things would be worse because he would be out of jail in a matter of hours and had a lot of connections, so this would be bad for her and her children. She told the detective that defendant had some very bad friends, kept a handgun in his home and that he and his friends would torment her and her children. When asked if she would testify against him, she said

she would not because defendant had once gotten her out of jail and she did not think he was that scary.

On April 21, 2001, the victim called 911 to report that defendant had been threatening her again. She told the dispatcher that defendant or his friend had said that everything would end in blood. She was afraid to leave her children home by themselves and was scared.

That same day, Sacramento Police Officer Harry Sugawara interviewed the victim at her home in response to the report of threats she had received. The victim's younger daughter (younger daughter), was present and served as an interpreter for her mother. The younger daughter spoke fluent English and had no difficulty communicating with the officer. At that time, the younger daughter would have been 16 years old. Officer Sugawara testified that, through the younger daughter, the victim told him she had received a death threat indirectly from defendant, with whom she had been intimately involved for approximately three years. Defendant had assaulted her on numerous occasions and she did not want any further contact with him. The victim described several prior acts of violence, including assaults and an attempted stabbing. The victim had received a telephone call the night before from a mutual friend named "Alex" who told her that defendant was not through with her and that "he was going to kill her and rape her daughters."

The younger daughter was emotional on the witness stand. She testified that she had heard her mother say defendant had

beaten her in the past. She had translated for her mother during interviews with officers on at least five different occasions, some of which had concerned the disappearance of her sister. She did not remember the content of the conversation she translated on April 21, 2001.

District Attorney Investigator James Ross interviewed both the victim and the sister on August 23, 2001. Regarding the June 9, 2000 incident, the sister told Ross that the victim had told her defendant grabbed her by the shoulders and head-butted her "a few times," causing her nose to bleed, when she was at defendant's home on "the date in question." This occurred after defendant's friend had left. Defendant had also hit her in the chest area with his hands. The victim told the sister that she and defendant went into the bathroom and washed the blood from her face and clothes, and defendant put ice on her face. The victim felt the police report was somewhat inaccurate in that it gave the impression she had washed parts of her body other than her face. The victim also said the report was inaccurate because defendant only head-butted her one time. The sister, however, said the victim had initially told her defendant head-butted her a few times. The sister also said the victim had told her that she had sex with defendant after the assault but that "she didn't particularly want to but she did anyway." The sister felt that maybe it was an attempt on defendant's part to be romantic. The victim did not use the word "rape." According

to the sister, the victim cried while she told the sister what had happened.

The victim told the sister not to give the police defendant's name because she was afraid of defendant. After the report was given, the victim told the sister not to translate any more "because of the defendant and any kind of outcome that might arise out of, out of calling the police and prosecuting the matter." Defendant had called the sister approximately six months after the incident and told her he and the victim had only had an argument. The sister told him not to call her anymore. The sister told the investigator that she is "afraid" of defendant and did not want to come to court. She said there had been approximately four other instances in which defendant had assaulted the victim.

Through the sister, the victim told Ross that she was still in a relationship with defendant and felt that if he got probation, everything would be fine. Defendant had made a comment a few days earlier that had caused her some fear but it could have been a joke. The victim said she was afraid of defendant, both at the time of the assault and at the time of the interview, and described several other instances when defendant had assaulted her.

The victim unwillingly testified at trial, sometimes refusing to answer questions. She had repeatedly asked for the case to be dismissed. She testified that she had known defendant for four years. She was still romantically involved

with defendant and had spent the night before her trial testimony with him. She said that on June 9, 2000, defendant had been jealous of her with respect to a male friend who had been visiting his house. When the friend left, he grabbed her shirt as she sat on the sofa. When she tried to get up, she grabbed his hands and his head struck her nose, causing it to bleed. She did not believe he had done that intentionally or she would not have stayed with him. Defendant apologized and she forgave him. At that point, they had consensual sex. Some of the bruises to her body were from when defendant grabbed her but others were a result of passionate sex.

The victim said she probably had another argument with defendant a few days later and that was why she called the police. She denied telling Deputy Petersen that she had been afraid to refuse sex with defendant or that defendant had threatened to kill her. She admitted she owed defendant $3,000 but denied that their argument on June 9 had been about this money. The victim also denied having told Officer Avila that defendant beat and raped her, and characterized the altercations with defendant as nothing more than "scandals" that had "been forgotten long ago."

The sister testified that she could not remember what she told Deputy Petersen or Investigator Ross but that some of Petersen's report was incorrect. She denied that the victim had told her she did not want to have sex with defendant and stated she did not understand the meaning of the word "force." She

also stated she did not understand the meaning of the word "afraid." The sister appeared to have difficulty communicating in English during trial, although she admitted that she did not have such difficulties communicating earlier in the district attorney's office. She claimed this was due to being less relaxed and the use of different words. She also admitted she did not want to come to court to testify.

The older daughter testified that, although she had initially translated her mother's conversation with Officer Avila on July 19, 2000, she left and the younger sister finished translating the conversation. It was possible, however, that she was confusing the July 19, 2000 incident with the April 21, 2001 incident. The older daughter had no memory of the content of the conversation other than the fact that her mother and defendant had been in an argument and that, initially, her mother wanted defendant arrested because she was angry. The older daughter testified that her mother and defendant got into a lot of arguments and sometimes the police were called. She did recall an instance when she translated a conversation with the police wherein her mother said defendant had raped her. She believed she was 12 years old at the time. The older daughter was 16 years old in July 2000.

Linda Barnard, Ph.D., a licensed marriage and family therapist and expert in domestic violence and BWS, testified as an expert on BWS. She explained the cycle of domestic violence and dispelled various myths surrounding the victim's behavior.

She had never interviewed defendant or the victim in this case and testified only generally regarding domestic violence, domestic rape and BWS.

During her testimony, Barnard opined that the primary cause of domestic violence is the batterer's need for power and control over the victim. She explained that there are several myths surrounding domestic violence, including (1) it does not happen very often; (2) women routinely lie about being victims of domestic violence; (3) women stay in violent relationships because they like it; and (4) one can tell a batterer or a battered woman by looking at them. Barnard also explained several myths about domestic rape, including (1) it does not happen very often; (2) women routinely lie about being victims of domestic rape; (3) it most often happens in conjunction with domestic violence; and (4) it is less traumatic than stranger rape.

According to Barnard, the two primary reasons women stay in abusive relationships are fear and love, which includes the need for financial support, and concern about breaking up the family. Furthermore, it is not uncommon for women who report domestic violence to recant, take the blame for the abuse, or cease to cooperate with the prosecution.

Barnard discussed the cyclical pattern or stages of domestic violence: (1) the tension-building stage, where there may be arguing, name calling and shoving; (2) the acute episode phase, where there is an outbreak of physical or sexual violence

and the victim fears for her life or personal safety; and (3) the honeymoon period, during which the batterer apologizes and promises never to do it again. This tends to increase the battered woman's dependency by reinforcing her tendency to deny the seriousness of the situation.

Barnard testified that there is usually a delay between the instance of domestic violence and the victim's report, and that only 10 to 20 percent of the victims report the instance at all. Victims reporting domestic rape most often do not call it "rape." One of the most common motivations for a victim to report domestic violence is that something different happened during the incident that made her more fearful or made her perceive an increased danger. As many as 77 percent of domestic violence and rape victims change their story, recant or become uncooperative at some point in the prosecution.

DISCUSSION

I

Defendant objected in limine, generally to Barnard's testimony pursuant to Evidence Code section 352 on the grounds that it was irrelevant, unduly prejudicial, cumulative and potentially confusing. He argued that this was not a case of simple "recantation" because there were so many different accounts of what happened. The trial court overruled defendant's objection and permitted Barnard's testimony.

During Barnard's discussion of the myth that women routinely lie about being victims of domestic violence, she

stated that domestic violence crimes are like any other crime in that only 2 percent of the reports are false reports. She also stated that, with respect to rape, the false report rate was a bit higher with 3 percent being false reports. Defense counsel made no objection to these statements during trial but, instead, chose to cross-examine Barnard on the subject and minimize the impact of the statistics.

Defendant now claims that this statistical testimony was objectionable as improper opinion and vouching for the veracity of the victim. Defense counsel, however, did not make a specific objection in limine, based on improper opinion or vouching. Nor did trial counsel object to the testimony during trial.[2] Trial counsel only objected to the admission of BWS evidence in general on the grounds of relevance and that the probative value was outweighed under Evidence Code section 352. "Failure to make a timely objection or motion to strike inadmissible evidence constitutes a waiver of the right to later complain of its erroneous admission into evidence. [Citation.] Parties also waive the right to later contest the admissibility of evidence where counsel fails to state the specific, correct ground or grounds supporting the objection." (*Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 865.) Hence, any

[2] Defendant's retained substitute trial counsel did raise this objection, among many others, in defendant's second motion for a new trial. The motion was denied.

objection to the evidence based on improper opinion or vouching has been forfeited. (Evid. Code, § 353, subd. (a).)

Defendant also maintains that Barnard's testimony regarding the percentage of false reports was inadmissible because it was irrelevant. (Evid. Code, § 350.) We disagree.

The rules pertaining to the admissibility of evidence are well settled. "Only relevant evidence is admissible [citations], and all relevant evidence is admissible, unless excluded under the federal or California Constitution or by statute." (*People v. Scheid* (1997) 16 Cal.4th 1, 13; Evid. Code, §§ 350, 351.) Relevant evidence is defined as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) The trial court is vested with broad discretion in determining the relevance of evidence and its evidentiary ruling on relevancy grounds is reviewed for abuse of discretion. (*Scheid, supra,* at p. 14; see also *People v. Champion* (1995) 9 Cal.4th 879, 922.)

Barnard's testimony that domestic violence crimes are like any other crime in that only 2 percent of the reports are false reports was relevant as having a tendency in reason to debunk the myth that women routinely lie about being victims of domestic violence. Barnard's testimony regarding the 3 percent false report rate for rape was relevant for the same reason. Thus, even presuming defendant's in limine objection to BWS

evidence preserved his objection to this particular testimony, the trial court did not abuse its discretion.

II

Defendant also contends that the trial court erred in permitting certain testimony regarding Barnard's belief of whether domestic violence matters should be pursued when a victim recants. We agree that the testimony was irrelevant but discern no prejudice.

During trial, the prosecutor questioned Barnard regarding whether it was common for a victim of domestic violence to later become uncooperative, recant and say they want the matter "left alone" and do not want to revisit the past. Barnard testified that such a scenario was "very common." The prosecutor then asked: "And do you think we should just leave it alone and say that?" Defense counsel objected to the question as "beyond the scope and it's not relevant." The trial court overruled the objection and Barnard responded: "Do I think we should just leave it alone? No." The prosecutor asked, "Why not?" and Barnard responded: "Having worked in the field of domestic violence for about twenty-five years and seen the devastating effects that it has on, especially on the victim who many times doesn't even understand some of her own dynamics about the effect that I think that there's a need for us to go forward and assist in dealing with those cases whether she feels that way or not in order to try to keep her safe and her children." At this point, the prosecutor moved on to questioning Barnard on the

common characteristics of domestic violence abusers that also rape.

Defendant argues the testimony was not relevant and "aroused sympathy for her plight as a victim and inspired the jury to 'go forward and assist.'" We address defendant's relevancy argument, as he objected to the testimony on that ground during trial.

The form of the question posed by the prosecutor and Barnard's response to it leaves it unclear whether the "we" who should not "just leave it alone" is the prosecution, law enforcement, therapists, or some combination thereof. In any event, we agree that Barnard's opinion regarding whether "we" should "just leave it alone" is of no consequence and irrelevant. Nor was it prejudicial.

Clearly, in the instant case, the matter was *not* being "left alone," as the prosecution was going forward with trial. In its context, the statement cannot be understood to exhort a jury to convict defendant despite a failure of proof as defendant now suggests. The jurors were instructed that they "must not be influenced by pity for or prejudice against [the] defendant," not to be "influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling" and to "conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences." (CALJIC No. 1.00.) The jury was also instructed as to the elements of the crimes charged and that it could only

find defendant guilty if convinced of his guilt beyond a reasonable doubt based on the evidence presented as to the charged crimes. (CALJIC Nos. 2.90, 7.15, 9.00, 9.02, 9.12, 9.94, 10.00.)

Accordingly, we discern no prejudice from Barnard's personal opinion that domestic violence matters should not be just left alone when the victim recants or her opinion that there is a need to "go forward and assist in dealing with those cases."

III

Defendant next makes a somewhat convoluted argument that the evidence was insufficient to support his conviction for rape. He argues that "[t]he only evidence specifically supporting the rape charge came entirely in the form of reports from the police of prior inconsistent statements" of the translators and that "[i]n each case, a relative of the complaining witness translated to the non-Russian-speaking officers what [the victim] supposedly had said." Thus, he reasons, that the "trans-linguistic, multiple hearsay . . . must be scrutinized particularly thoroughly because of its inherent probability to lose (or gain) something in the translation" and therefore, the reliability of this hearsay evidence should weigh in this court's assessment of the sufficiency of the evidence. Moreover, he argues, the translations may have been inaccurate.

The flaw in this approach is that defendant did not object to the testimony as hearsay at trial and therefore he cannot

challenge the admissibility of that testimony on appeal.[3] (Evid. Code, § 353, subd. (a); *People v. Bolin* (1998) 18 Cal.4th 297, 321.) Having waived the argument that the translators' testimony, in whole or in part, should not have been admitted, defendant cannot challenge the admissibility of that testimony under the guise of challenging the sufficiency of the evidence. Because the admissibility of the translators' testimony is, at this point, beyond question, in reviewing the sufficiency of the evidence we have to take that testimony into account in our analysis. Doing so, we conclude substantial evidence supports defendant's conviction for rape.

"In reviewing [a claim regarding] the sufficiency of the evidence, we must determine 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] '[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] We '"presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."'"

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[3] The contention was raised, however, in defendant's second motion for a new trial filed by his retained substitute trial counsel. That motion was denied.

(*People v. Davis* (1995) 10 Cal.4th 463, 509, italics omitted.) "Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the jury." (*People v. Hicks* (1982) 128 Cal.App.3d 423, 429.) This is not such a case.

Here, the victim's sister had testified inconsistently and remembered little at trial. Deputy Petersen testified that when he spoke with the sister and the victim, the sister translated the victim as saying that on June 9, defendant head-butted her three times, punched and kicked her for awhile, then told her to clean up because he wanted to have sex. She "let" him because she was "afraid" he would hurt her if she refused him. Afterward, he attempted again but she was crying and told him "no" and he "did not force [her] to do it again."

The sister also told the district attorney's investigator that the victim "didn't particularly want to [have sex with defendant] but she did anyway," and the sister felt that maybe it was an attempt on the defendant's part to be romantic. Otherwise, the sister essentially repeated the same story to Investigator Ross that she had given Deputy Petersen.

The older daughter was also inconsistent with her previous statement to police and unable to remember many of the relevant facts at trial. Thus, Officer Avila testified that the older daughter reported on July 19 that the victim said defendant had

beaten and raped her on June 11. "Beat" and "raped" were the exact words the older daughter used.

This testimony, if true, is sufficient to support defendant's conviction for rape. Although defendant insists that the testimony is unreliable and, therefore, insufficient, "[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Thornton* (1974) 11 Cal.3d 738, 754, overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12.) We do not consider the credibility of witnesses in determining whether there is substantial evidence. (*People v. Elize* (1999) 71 Cal.App.4th 605, 615.)

Finally, defendant attacks the evidence by arguing that the sister's "abilities [as a translator] were of questionable merit," as she claimed to have difficulty with the words "force" and "afraid" at trial. This, of course, was solely the province of the jury and we will not substitute our evaluation of the sister's abilities for that of the fact finder. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

IV

The trial court sentenced defendant to an aggregate term of 10 years eight months in state prison, as follows: the middle term of three years on count one for assault (§ 245, subd.

(a)(1)), a consecutive four years for the great bodily injury enhancement (§ 12022.7, subd. (e)) on count one, a full consecutive middle term of three years pursuant to section 1170.15 on count three for threatening a witness (§ 136.1, subd. (c)(1)), a consecutive eight months (one-third the middle term) on count five for making criminal threats (§ 422) and a concurrent six years (the middle term) on count two for forcible rape (§ 261, subd. (a)(2)). A middle term of three years was also imposed on count four for the battery with serious bodily injury (§ 243, subd. (d)), but stayed pursuant to section 654.

In supplemental briefing, defendant contends the trial court violated his right to a jury determination of any facts that increase his sentence beyond the statutory maximum when it imposed consecutive sentences for threatening a witness and making criminal threats. (*Blakely*, *supra*, 542 U.S. ___ [159 L.Ed.2d 403].) He argues that the statutory provision for concurrent sentences where the trial court otherwise fails to specify the structure of the sentence (§ 669) renders a consecutive sentence subject to *Blakely's* mandate for jury findings. We disagree.

Section 669 imposes an affirmative duty on a sentencing court to determine whether the terms of imprisonment for multiple offenses are to be served concurrently or consecutively. (*In re Calhoun* (1976) 17 Cal.3d 75, 79-80.) However, that section leaves this decision to the trial court's discretion. (*People v. Jenkins* (1995) 10 Cal.4th 234, 255-256.)

"While there is a statutory presumption in favor of the middle term as the sentence for an offense [citation], there is no comparable statutory presumption in favor of concurrent rather than consecutive sentences for multiple offenses except where consecutive sentencing is statutorily required. The trial court is required to determine whether a sentence shall be consecutive or concurrent but is not required to presume in favor of concurrent sentencing." (*People v. Reeder* (1984) 152 Cal.App.3d 900, 923.)

Section 669 provides that upon the sentencing court's failure to determine whether multiple sentences shall run concurrently or consecutively, then the terms shall run concurrently. This provision reflects the Legislature's policy of "speedy dispatch and certainty" of criminal judgments and the sensible notion that a defendant should not be required to serve a sentence that has not been imposed by a court. (See *In re Calhoun, supra*, 17 Cal.3d at p. 82.) This provision does not relieve a sentencing court of the affirmative duty to determine whether sentences for multiple crimes should be served concurrently or consecutively. (*Ibid.*) And it does not create a presumption or other entitlement to concurrent sentencing. Under section 669, a defendant convicted of multiple offenses is entitled to the exercise of the sentencing court's discretion, but is not entitled to a particular result.

The sentencing court is required to state reasons for its sentencing choices, including a decision to impose consecutive

sentences. (Cal. Rules of Court, rule 4.406(b)(5); *People v. Walker* (1978) 83 Cal.App.3d 619, 622.) This requirement ensures that the sentencing judge analyzes the problem and recognizes the grounds for the decision, assists meaningful appellate review, and enhances public confidence in the system by showing sentencing decisions are careful, reasoned and equitable. (*People v. Martin* (1986) 42 Cal.3d 437, 449-450.) But the requirement that reasons for a sentence choice be stated *does not create a presumption or entitlement to a particular result*. (See *In re Podesto* (1976) 15 Cal.3d 921, 937.)

Therefore, entrusting to trial courts the decision whether to impose concurrent or consecutive sentencing under our sentencing laws is not precluded by the decision in *Blakely.* In this state, every person who commits multiple crimes knows that he or she is risking consecutive sentencing. While such a person has the right to the exercise of the trial court's discretion, the person does not have a legal right to concurrent sentencing, and as the Supreme Court said in *Blakely*, "that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned." (*Blakely, supra,* 542 U.S. at p. ___ [159 L.Ed.2d at p. 417].)

The sentencing rules specify several criteria to guide the trial court's determination whether to impose consecutive or concurrent terms. Pertinent to this case is the fact the "crimes involved separate acts of violence or threats of

violence." (Cal. Rules of Court, rule 4.425(a)(2).)[4] Under this criterion, the court may impose consecutive sentences for separate threats of violence committed against the same victim. (See *People v. Floyd P.* (1988) 198 Cal.App.3d 608, 613.) This is the operative circumstance in this case. The court made its determination to impose a consecutive sentence on count three pursuant to section 1170.15 and imposed the consecutive sentence on count five, noting the latter offense "involve[d] a separate offense, separate date and time, even though it's the same victim."

Nor was the court's decision to impose consecutive terms of imprisonment barred by *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] and *Blakely* because the facts supporting its decision were found by the jury as reflected in its verdicts. The information charged separate threats or incidents of intimidation against the victim, the first occurring on June 9, 2000 (count three) and the second occurring on July 19,

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[4] California Rules of Court, rule 4.425 provides in part as follows:

"Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

"(a) Facts relating to the crimes, including whether or not:

"(1) The crimes and their objectives were predominantly independent of each other.

"(2) The crimes involved separate acts of violence or threats of violence.

"(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior."

2000 (count five). Therefore, because imposition of consecutive sentences on counts three and five was based upon the jury's verdicts rather than the court's independent findings of fact, defendant's sentence does not run afoul of *Apprendi* and *Blakely*. We therefore reject his claim of error.

V

In the course of our review of the record, we note two errors in the preparation of the abstract of judgment. Item 1 of the abstract incorrectly lists the time imposed on count five as eight years rather than eight months. Item 2 incorrectly lists the great bodily injury enhancement as a violation of section 12022.7, subdivision (d) rather than the correct subdivision (e). We shall order the abstract of judgment corrected to reflect the oral pronouncement of the court at sentencing and the jury's true finding.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting in item 1 that the defendant was sentenced to the middle term of two years on count five, two-thirds of which was stayed, and one-third or eight months to be served consecutively to the balance of the defendant's aggregate commitment. In addition, the reference in item 2 to subdivision (d) of Penal Code section 12022.7 shall be changed to subdivision (e). A certified copy of the amended abstract shall be forwarded to the Department of Corrections.

BUTZ, J.

We concur:

BLEASE, Acting P. J.

MORRISON, J.